No. 86-1007

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

UNITED STATES OF AMERICA,

Petitioner,

v.

MESSINA BUILDERS AND
CONTRACTORS CO.

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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REASONS FOR DENYING THE WRIT

The issue presented in the District Court and the Circuit Court in this case was whether the Government's failure to give a supplier of funds notice pursuant to §6303(a) of the Internal Revenue Code of the assessment against the taxpayer-employer for its unsatisfied withholding tax liability bars the Government from bringing a civil suit against the supplier of funds to impose derivative liability under §3505(b) of the Internal Revenue Code.

In Jersey Shore State Bank v. United States, 479 U.S. _____ (1987), this Court held that §6303(a) does not require the Government to provide notice and a demand for payment to a lender before bringing a civil suit under §3505(b).

Because a review on writ of certiorari is not a matter of right, but of

judicial discretion, it will be granted only when there are special and important reasons therefor. This case does not present such special and important reasons.

Unless the Court wishes to reconsider its decision in Jersey Shore, there is no need to grant plenary review in this case, since there now exists no intercircuit conflict and the case raises no important question of federal law requiring consideration by this Court.

Nor should the Court grant the Petition for a Writ of Certiorari, vacate the judgment and remand the case to the Eighth Circuit for further consideration in light of Jersey Shore, for to do so would result in a fundamentally unfair retroactive application of its rule. In Jersey Shore, the Court decided an issue of first impression whose resolution was

not clearly foreshadowed. Furthermore, the decision interpreted §6303(a) and §3505(b) of the Internal Revenue Code in a manner which the Seventh, Eighth and Eleventh Circuits considered contrary to the plain language of the statutes. Therefore, such a summary disposition of this case would be unjust and inequitable.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to review the judgment and opinion of the Eighth Circuit should be denied.

Respectfully submitted,

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